

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

EAGLE HARBOR HOLDINGS, LLC, and
MEDIUSTECH, LLC,

Plaintiffs,

v.

FORD MOTOR COMPANY,

Defendant.

Case No. 3:11-cv-05503-BHS

**FORD'S SUR-REPLY TO THE JOINT
MOTION FOR DISCOVERY
PURSUANT TO LCR 37
REGARDING FORD'S DOCUMENT
PRODUCTION**

NOTE ON MOTION CALENDAR:
November 26, 2013

Plaintiffs attempt to justify their request for additional email discovery by asserting in their Reply that they “searched email from all their employees using 198 search terms and produced 53,216 emails and attachments.” (Dkt. No. 187 at 24). Ford never asked Plaintiffs to search all of their employees’ emails using nearly 200 search terms. Indeed, despite multiple previous requests for this information, Plaintiffs previously refused to identify which custodians they had collected emails from and what search terms they had used. (Leshan Decl. ¶ 10, Ex. I)¹

¹ Plaintiffs claim they provided information on this topic during the deposition of Mr. Brian Hewitt, but that deposition took place on November 19, 2013, *the same day Ford’s opposition to Plaintiffs motion was due*. Ford had no meaningful opportunity to review or address this information, which Plaintiffs refused to provide during several earlier conferences with Ford on ESI discovery.

1 In any event, Plaintiffs' internal email collection process does not justify the email
 2 discovery they seek from Ford. Their claim that they "searched email from all their
 3 employees" masks the fact that Medius only has nine employees. (Ex. A (November 19, 2013
 4 Deposition of Brian Hewitt at 213:17-25).) Moreover, regardless of how Plaintiffs chose to
 5 search their own ESI, this District's Model ESI Agreement and the Model Patent Order provide
 6 reasonable but fair default limits on how much ESI searching may be imposed on an adversary:
 7 five custodians, and five search terms each. Ford has agreed to search more than double these
 8 amounts. Plaintiffs' refusal to pay for additional searching of so-called "general" custodians
 9 using "general" terms shows that even they believe their requested searching is excessive.

10 For these reasons, as well as those stated in the parties' Joint Motion for Discovery
 11 Pursuant to LCR 37 (Dkt. No. 187), Ford respectfully requests that Plaintiffs' request be
 12 denied.

13 DATED: December 3, 2013

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CERTIFICATE OF SERVICE

I certify that this pleading was filed electronically with the Court and thus served simultaneously upon all counsel of record, this 3rd day of December, 2013.

/s/ Duncan E. Manville

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